

MAY 28 2008

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE DE JESUS GARCIA  
HERMOSILLO; GLORIA QUINONEZ  
ARELLANO,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 05-75352

Agency Nos. A75-646-943  
A75-646-944

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted May 20, 2008\*\*

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

Jose de Jesus Garcia Hermosillo and Gloria Quinonez Arellano, married  
natives and citizens of Mexico, petition pro se for review of the Board of

---

\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without  
oral argument. *See* Fed. R. App. P. 34(a)(2).

Immigration Appeals’ (“BIA”) order denying their motion to reopen proceedings to reissue its decision denying petitioners’ motion to reopen alleging ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. Reviewing for abuse of discretion, *Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004), *amended by* 404 F.3d 1105 (9th Cir. 2005), we grant the petition and remand for further proceedings.

The BIA abused its discretion by failing to address the affidavit Garcia Hermosillo submitted to show petitioners did not receive the BIA’s March 23, 2004 decision. *See Singh v. Gonzales*, 494 F.3d 1170, 1172 (9th Cir. 2007) (presumption of proper mailing created by transmittal cover letter may be overcome by evidence of non-receipt by a petitioner or counsel). We remand for the BIA to review the evidence in the first instance and to determine whether it is sufficient to overcome the presumption of mailing.

**PETITION FOR REVIEW GRANTED; REMANDED.**